Supreme Court, U.S.
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165

No. 10-26

In The

Supreme Court of the United States

MICHAEL R. WOOD,

Petitioner,

v.

SUPERIOR COURT OF SAN JOAQUIN COUNTY,

BANK OF NEW YORK,

Respondents.

On Petition For A Writ of Certiorari
To The Supreme Court of California

PETITION FOR A WRIT OF CERTIORARI

Michael R. Wood
Petitioner In Pro Per
2728 Jackson Avenue
Tracy, California 95377
Telephone No.: (209) 830-1869
Facsimile No.: (209) 833-7976

QUESTION PRESENTED

This case presents a question of increasing importance, whether the rule requiring a notice of appeal to be filed verses filing a new writ petition with the appellate court in a special proceeding being an appealable order.

1. Does the Supreme Court or the Appellate Court have appellate jurisdiction in cases of mandamus, certiorari, prohibition, or quo warrant upon filing a notice of appeal.

2. Is filing a notice of appeal the remedy, because a superior court's final decision on a writ petition that disposes of all the issues between the parties is deemed a final judgment under CCP § 1064, an aggrieved party must seek review of the decision in the court of appeal by filing a notice of appeal, and not by filing a writ proceeding under California Code of Civil Procedure, § 904.1(a)(1).

3. Whether the rule requiring a notice of appeal to be filed, verses filing a new writ petition with the appellate court in a special proceeding from an appealable order as the California Appellate courts are in conflict holding that the Notice of Appeal from the order filed on December 24, 2009 was non appealable.

PARTIES TO THE PROCEEDINGS

The caption of the case in this court contains the names of all the parties. Michael Wood was Plaintiff and Appellant below with respect to all issues. All respondents are listed in the caption. At all times relevant to this action.

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SHALL ABRIDGE THE PRIVILEGES OR IMMUNITIES CITIZENS OF THE UNITED STATES; NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS OF LAW; NOR DENY ANY PERSON WITHIN ITS JURISDICTION THE EQUAL PROTECTION OF THE LAWS." 6-14

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PETITION FOR A WRIT OF CERTIORARI

Petitioners respectfully pray that a writ of certiorari issue to review the final judgment of the Court of Appeal, State of California, Third Appellate District.

OPINION AND JUDGMENT BELOW

The Court of Appeal, Third Appellate District order is not reported, and is reprinted in the Appendix ("Pet. App.") at App. 2. Denial of Review by the California Supreme Court is reprinted in the Appendix at App. 1.

BASIS FOR JURISDICTION IN THIS COURT

A verified petition for Writ of Mandate to compel the Trial Court to Quash Service of Summons and /or Dismiss Action under Code of Civil Procedure, § 418.10(c) and § 1085(b) that was filed on October 15, 2009 with the Superior Court in the State of California, in and for the County of San Joaquin [App. 5].

The Third Appellate District issued it's order after the court examined the notice of appeal and determined that the Order appealed from is non appealable. Therefore, the appeal filed on December 24, 2009, was dismissed on January 14, 2010 [App. 3], and there after petitioner timely appealed to the California Supreme Court. The California Supreme Court entered its order and denied review of the Third Appellate District Order on April 22, 2010. [App. 1].

This petition is timely filed under United States Supreme Court Rule 13(1) and 28 U.S.C. § 2101(c) within 90-days from April 22, 2010 of denial of review by the California Supreme Court being no later than Wednesday, July 21, 2010, and this Court has jurisdiction pursuant to 28 U.S.C. § 1257.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Right to appeal is governed by statute.

Appellate jurisdiction is conferred by the constitution. California, Constitution, Article VI, § 11, and the right to appeal is granted and governed by statute. Code of Civil Procedure § 904.1 is the primary statute governing what is appealable,and aggrieved parties may appeal final judgments and orders made appealable by statute. On appeal, the party aggrieved by the appealable judgment or order has a right to review if certain conditions are satisfied, such as filing a timely notice of appeal. The court of appeal has no discretion not to hear the matter, and review of some orders may be available only by means of a writ petition. Failure to seek a statutorily mandated writ regarding such an order waives review of the order for all purposes, including appeal from the final judgment.

STATEMENT OF THE CASE

Petitioner Michael Wood on October 15, 2009 filed Verified Petition for Writ of Mandate et al., in

the Superior Court in the State of California, County of San Joaquin, unlimited jurisdiction, case no. 39-2009-00227901-CU-WM-STK, and against Superior Court of California, County of San Joaquin, et. al., Respondent; and the Bank of New York as successor to JPMorgan Chace Bank, National Association, as Trustee for the Ownit Mortgage Loan Asset Backed Certificates , Series 2006-1, Real Party in Interest, and in support of the Verified Petition for Writ of Mandate filed a (first) Request for Judicial Notice; (second) Request for Judicial in support of the verified Petition, and assigned the case to Judge Lesley D. Holland. Thereafter, no opposition was filed by the Respondent Court, or the Real Party of Interest against the Verified Petition for Writ of Mandate.

On Wednesday, December 9, 2009 the court by Judge George Abdallah filed an order that stated "After due consideration of the petition for writ of

mandate and with good cause appearing therefore, IT IS HEREBY ORDERED that the writ be denied." Thereafter, the court did not file or serve a separate formal judgment, or notice of entry of judgment or order.

On Thursday, December 24, 2009 the petitioner filed a Notice of Appeal with clerk of the Superior Court, County of San Joaguin that states "PLEASE TAKE NOTICE that petitioner Michael Wood hereby appeals from the final judgment entered on or about December 9, 2009 from the superior court's final order that the writ of mandate be denied."

On Thursday, January 14, 2010 the Court of Appeal of the State of California, third Appellate District filed an order that stated "BY THE COURT: The curt examined the notice of appeal and determined that the order appealed from is non-appealable. Therefore, the appeal filed on

December 24, 2009 is dismissed", and thereafter the California Supreme Court on April 22, 2010 denied a petition for review.

ARGUMENT FOR GRANTING THE WRIT

I. **The Court should grant the petition to resolve a conflict between the decision of the highest court of California, and the Fourteenth Amendment and the rights Guaranteed being "Due Process and Equal Protection"and, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."**

A. **The Supreme Court of California has**

long held that a superior court judgment denying relief in the nature of mandamus or prohibition was appealable as a matter of statutory right.

In the California Supreme Court Case entitled Palache v. Hunt (1884) 64 Cal. 473, 474 [2 P. 245] the court held that a superior court judgment or order denying relief in the nature of mandamus or prohibition was appealable as a matter of statutory right that held "an appeal may be taken * * * from a judgment [order] of a Superior Court, granting or denying an application for a writ of mandamus" that holds the following:

> "There is not in the present, nor was there in the late Constitution, any provision conferring appellate jurisdiction in cases of mandamus, certiorari, prohibition, or quo warranto. And yet this court has repeatedly exercised such jurisdiction. * * * And we must presume that the framers of the present

> Constitution copied into it the provision of the late one on this subject with knowledge of the interpretation which this court had given to it, and thereby such construction. In other words, this court having repeatedly held that it had appellate jurisdiction in such cases under the late Constitution, the framers of the present Constitution, if they had intended to effect a change in that respect, would have made such intention clear."
>
> "We are therefore of opinion that an appeal **may be taken * * * from a judgment of a Superior Court, granting or denying an application for a writ of mandamus,** * * *."

B. REVIEW OF SPECIAL PROCEEDING

The California Supreme Court, First Appellate District, Second Appellate District, Forth Appellate District, and the Sixth Appellate District Courts have ruled that an appeal from a mandamus order is appealable.

The California Supreme Court held in the case entitled Steen v. Board of Civil Service

Commrs., 26 C.2d 716, 727; 160 P.2d 816 states that:

> "Respondents urge that no appeal lies from the minute order denying without prejudice the application for the alternative writ. On the score of the lack of entry of a formal judgment or order upon the minute order, the Rules on Appeal provide that the date of entry of an order which is entered on the minutes shall be the date of its entry thereon unless the minutes expressly direct the preparation and filing of a written order. (Rules on Appeal, rule 2(b) (2); see, also, Brown v. Superior Court, 70 Cal.App. 732 [234 P. 409]; Colthurst v. Justice's Court, 100 Cal.App. 146 [279 P. 812].) Hence, the minute order was an order and no further order was contemplated. In Brown v. Superior Court, supra, in proceedings for certiorari no demurrer or answer was filed and when the order to show cause was heard a minute order was made denying the writ. It was held that a final appealable judgment had been entered. In the instant case, as before stated, the procedure set forth in section 1107 of the Code of Civil Procedure

> was followed, under which a copy of the petition for the writ is served on the respondent before an alternative writ is issued and the respondent may file points and authorities in opposition to it. The court then made its minute order denying the petition. Its action was final insofar as appeal was concerned. No further order was contemplated.

Additionally, the court in the First Appellate District held in the case entitled **Dunn v. Municipal Court**, 220 C.A.2d 858, 863 that states as follows:

> "Petitioner, James Dunn, appeals from an order denying his application for a writ of mandamus directing the municipal court to quash a search warrant on the ground that it was in validly issued." Furthermore the court stated at foot note 1 "although the appeal is designated as being from an "Order Denying petitioner's application for a Writ of Mandamus," it is properly an appeal from a final judgment in a special proceeding. (See Code Civ. Proc., § 963; see also 3 Witkin, Cal. Procedure, § 16, pp. 2158-2159; and see

> Ruddel v. Warne, 73 Cal.App.2d 907, 908-909 [167 P.2d 811].) An appeal lies to the District Court of Appeal from granting or denial of relief in a proceeding in mandamus. Ballagh v. Superior Court, 25 Cal.App. 149, 150-151 [142 P. 1123]; Knowles v. Thompson, 133 Cal. 245, 248 [65 P. 468]; Keech v. Joplin, 157 Cal. 1, 7 [106 P. 222].

The court in the Second Appellate District held in the case entitled Covina-Azusa Fire Fighters Union v. City of Azusa, 81 Cal.App.3d 48, 56; 146 Cal.Rptr. 155 as follows:

> The general rule is that an appeal lies from an order denying a petition for a writ of mandate. (Ross v. Municipal Court (1975) 49 Cal. App.3d 575 [122 Cal.Rptr. 807]; Kingson v. Dept. of Motor Vehicles (1969) 271 Cal.App.2d 549 [76 Cal.Rptr. 614]; Cody v. Justice Court (1956) 238 Cal.App. 2d 275 [47 Cal.Rptr. 716].

The court in the Fourth Appellate District held in the case entitled Public Defenders'

Organization v. County of Riverside, 106 Cal. App.4th 1403, 1409; 132 Cal.Rptr.2d 81 [Mar. 2003] that states as follows:

> The Judgment is Final and Appealable. General, only judgements may be appealed. (Code Civ. Proc., § 904.1, subd. (a)(1).) "A judgment is the final determination of the rights of the parties in an action or proceeding." (Id., § 577.) Petitions for extraordinary writs, such as petitions for writs of mandate, are special proceedings. (Id., § 1067 et seq.) Accordingly, an order granting or denying a petition for an extraordinary writ constitutes a final judgment for purposes of an appeal, even if the order is not accompanied by a separate formal judgment. (**Townsel v. San Diego Metropolitan Transit Development Bd.** (1998) 65 Cal.App.4th 940, 944, fn. 1 [77 Cal. Rptr.2d 231]; Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2002) ¶ 2:111, p. 2-54.1)

Additionally, in the Fourth Appellate District it held in the case entitled **Townsel v. San Diego**

Metropolitan Transit Development Bd., 65 Cal. App.4th 940, 944, 77 Cal.Rptr.2d 2311 [July 1998] that states:

> "The court adjudicated Townsel's petition for writ of mandate by way of his separately filed "motion for issuance of writ of mandamus," which the court referred to as an "application for writ of mandate."
>
> We view the order denying Townsel's motion as an order denying his petition for writ mandate.
>
> Townsel's notice of appeal states he is appealing from the order denying his "Motion [sic] for Issuance of Writ of Mandamus" and that he has not been served with notice of entry of judgment. The record does not show that judgment was entered on the order. However, even if a separate formal judgment has not been entered on an order denying a petition for writ of mandate, the order is properly treated as a final judgment in a special proceeding for purposes of appeal. (Haight v. City of San Diego (1991)

228 Cal.App.3d 413, 416, fn. 3 [278 Cal. Rptr. 334].)

The Sixth Appellate District held in the case entitled JKH Enterprises, Inc. v. Department of Industrial Relations, 142 Cal.App.4th 1046, 1056; 48 Cal.Rptr.3d 563 [Aug. 2006] that states:

> "an order denying a petition for writ mandamus that effectively disposes of the action because no issues remain to be determined is also appealable. (Bollengier v. Doctors Medical Center (1990) 222 Cal.App.3d 1115, 1122 [272 Cal.Rptr. 273]; MCM Construction, Inc. v. City and County of San Francisco (1998) 66 Cal.App.4th 359, 367, fn. 3 [78 cal.Rptr.2d 44].)"

CONCLUSION

The Court should grant the petition for a writ of certiorari and reverse the decision of the Third Appellate District of California.

Respectfully submitted,

Michael Wood, In Pro Per
Petitioner In Pro Per
2728 Jackson Avenue
Tracy, California 95377

IN THE
SUPREME COURT OF CALIFORNIA

No. S180557

En Banc

MICHAEL R. WOOD,
Plaintiff and Appellant,

v.

SUPERIOR COURT OF SAN JOAQUIN COUNTY,
Defendant and Respondent;

BANK OF NEW YORK, Real Party in Interest
and Respondent

The Petition for Review is denied.

Corrigan, J., was recused and did not participate.

Date of Order: April 22, 2010
Order Signed by: George, Chief Justice

COURT OF APPEAL OF THE STATE OF CALIFORNIA
IN AND FOR THE THIRD APPELLATE DISTRICT

Case No C0633839
San Joaquin County
No. 39200900227901CUWMSTK

MICHAEL R. WOOD,
Plaintiff and Appellant,
v.
SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN JOAQUIN,
Defendant and Respondent;

THE BANK OF NEW YORK,
Real Party in Interest and Respondent.

Date of Order: January 14, 2010
Order Signed by: Blease, Acting P.J.

BY THE COURT:

The court examined the notice of appeal and determined that the Order appealed from is non appealable. Therefore, the appeal filed on December 24, 2009, is dismissed.

Dated: January 14, 2010
By BLEASE, Acting P. J.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN
Case No. 39-2009-00227901-CU-WM-STK

NOTICE OF APPEAL
Joseph Manlapaz; Michael Wood; et al.,
Petitioner,
v.
Superior Court of California,
County of San Joaquin,
Respondent;

The Bank of New York,
Real Party in Interest.

NOTICE OF APPEAL filed December 24, 2009

NOTICE OF APPEAL
To the Clerk of the Superior Court of the State of California for the County of San Joaquin.

PLEASE TAKE NOTICE that petitioner Michael Wood hereby appeals from the final judgment entered on or about December 9, 2009, or appeals from the final order entered on or about December 9, 2009 from the superior court's final decision on a writ of mandate petition disposing of all the issues between the parties being a final judgment or final order as the court ordered that the writ of mandate be denied.
Dated: December 24, 2009

/s/ Michael Wood

App. 4

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

Case No. 39-2009-00227901-CU-WM-STK

ORDER

Joseph Manlapaz; Michael Wood; et al.,
Petitioner,

v.

Superior Court of California,
County of Interest.San Joaquin,
Respondent;
The Bank of New York,
Real Party in Interest.

Order filed December 9, 2009

After due consideration of the petition for writ of mandate and with good cause appearing therefore, IT IS HEREBY ORDERED that the writ be denied.

Dated: December 9, 2009
By Judge: George Abdallah

App. 5

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

Case No. 39-2009-00227901-CU-WM-STK

Joseph Manlapaz; Michael Wood; et al.,
Petitioner,

v.

Superior Court of California,
County of San Joaquin,
Respondent;

The Bank of New York,
Real Party in Interest.

Filed on October 15, 2009

Verified Petition for Writ of Mandate to compel Trial Court to Quash Service of Summons and /or Dismiss Action under Code of Civil Procedure, § 418.10(c) and § 1085(b).